IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4526 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

INDIAN POSTS & TELEGRAPHS DEPARTMENT - Petitioner(s)

Versus

SATISHCHANDRA K BHATT - Respondent(s)

==========

Appearance :

MR HARESH J TRIVEDI for Petitioner No(s).: 1.

MR RC PATHAK for Respondent No(s).: 1.

==========

CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 27/06/2005

ORAL JUDGMENT

1.0 This petition is directed against the order dated 31st March, 1999 passed by the Industrial Tribunal in Reference [I.T.C.] No. 25/88, whereby the Tribunal has directed the petitioner to reinstate the respondent workman with full back wages.

2.0 The short facts of the case are that the respondent herein was working as Extra Departmental Agent at village Kakabhai Sihan on a monthly salary of Rs.125/- since 1st April, 1978. Since some allegations were made against the respondent, inquiry was held against him. Charge-sheet was issued to him under Rule 8 of the Extra Departmental Agents (Conduct & Service) Rules, 1964. Thereafter, the respondent was dismissed from the service w.e.f. 31st January, 1985.

2.1. It is the case of the petitioner that though the respondent had the departmental remedy of challenging the order of termination before the Higher Authority, he neither preferred any appeal nor made any grievance against the said order of termination and thereby accepted the said order.

2.2. However, after a period of about more than one and half years, a complaint dated 27th November, 1986 was made under the Industrial Disputes Act as regards reinstatement, which was ultimately referred to the Industrial Tribunal, Ahmedabad for adjudication. The Industrial Tribunal, after considering the case on merits, allowed the said Reference with the aforesaid directions. Hence, this petition.

3.0 Mr. Trivedi learned advocate for the petitioner has contended that in view of the decision of the Apex Court in the case of **Sub-Divisional Inspector of Posts & Ors. v. Theyyam Joseph reported in A.I.R. 1996 (S.C.) 1271**, wherein it has been held that the Posts & Telecommunications

Department is not an “Industry” as defined under Section 2 (j) of the Industrial Disputes Act, 1947, the Extra Departmental Agents employees of the Postal Department cannot be said to be “Workman” under the Industrial Disputes Act. He has, therefore, submitted that in view of the aforesaid decision, the order passed by the Industrial Tribunal is required to be quashed and set aside.

4.0 As against that Mr. R.C. Pathak learned advocate for the respondent has submitted that the aforesaid decision has been reversed by the subsequent decision of the Apex Court reported in 1998 (1) S.C.C. (L&S) p. 6, wherein it has been held that the Posts & Telegraph Department is an “Industry” within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Therefore, the Labour Court was justified in granting reinstatement with full back wages.

5.0 I have heard the learned advocates for the respective parties and have perused the relevant materials placed on record. While issuing notice, this Court vide order dated 09.07.1999 had stayed the implementation of the impugned award in view of the decision of the Apex Court in the case of **Sub-Divisional Inspector of Posts & Ors. v. Theyyam Joseph reported in A.I.R. 1996 (S.C.) 1271**. Having gone through the aforesaid decisions, it is clear that the dispute on hand is as to whether the Posts & Telegraph Department can be termed to be an “Industry” or not under the provisions of the I. D. Act.

6.0 The observations made in Para 7 of the decision of the Apex Court in the case of **General Manager, Telecom v. Srinivasa Rao & Ors. reported in A.I.R. 1998 S.C. 656** is relevant for our purpose. It reads as under;

> "A two-Judge Bench of this Court in Theyyam Joseph's case (1996) 8 S.C.C. 489: (1996 A.I.R. S.C.W. 1365) (supra) held that the functions of the Postal Department are part of the sovereign functions of the State and it is, therefore, not an "Industry" within the definition of Section 2(j) of the Industrial Disputes Act, 1947. Incidently this decision was rendered without any reference to the seven Judge Bench decision in Bangalore Water Supply (AIR 1978 SC 548) (supra). In a later two-Judge Bench decision in Bombay Telephone Canteen Employees' Association case, AIR 1997 SC 2817, this decision was followed for taking the view that the Telephone Nigam is not an "Industry". Reliance was place in Theyyam Joseph's case (1996) 8 SCC 489 (1996 AIR SCW 1365) (supra) for that view. However, in Bombay Telephone Canteen Employees' Association case (i.e. the latter decision); we find a reference to the Bangalore Water Supply Case. After referring to the decision in Bangalore Water Supply, it was observed that if the doctrine enunciated in Bangalore Water Supply is strictly applied, the consequences is "catastrophic". With respect, we are unable to subscribe to this view for the obvious reason that it is in direct conflict with the seven Judge Bench decision in Bangalore Water Supply case (supra) by which we are bound. It is needless to add that it is not permissible for us, or for that matter any Bench of lesser strength, to take a view contrary to that in Bangalore Water Supply (supra) or to by-pass that decision so long as it holds the field. Moreover, that decision was rendered long back nearly two decades earlier and we find no reason to think otherwise. Judicial discipline

> requires us to follow the decision in Bangalore Water Supply case (1978) 2 SCC 213 (AIR 1978 SC 548). We must, therefore, add that the decision in Theyyam Joseph (1996) 8 SCC 489 : (1996 AIR SCW 1365) and Bombay Canteen Employees' Association, AIR 1997 SC 2817, cannot be treated as laying down the correct law. This being the only point for decision in this appeal, it must fail."

7.0 Thus, in view of the aforesaid decision, the contention raised by the learned advocate for the petitioner that the Posts and Telegraph Department is not an "Industry" has now been negatived, and therefore, the said Department is now considered to be an "Industry" under the provisions of the I. D. Act. However, the impugned order granting back wages is required to be quashed in view of the principle laid down by the Apex Court that a workman shall be entitled for wages only if he has worked for the said period. Hence, the impugned order passed by the Industrial Tribunal is required to be modified.

8.0 In the premises aforesaid and in view of the aforesaid decision, this petition is partly allowed. The order dated 31st March, 1999 passed by the Industrial Tribunal in Reference [I.T.C.] No. 25/88 is modified to the extent that the direction regarding reinstatement in service is confirmed and the direction regarding grant of back wages is quashed and set aside. However, it is clarified that since the impugned award was stayed by this Court, the respondent is entitled for salary from 1.5.1999 till he is reinstated in service. Thus, the petitioner shall pay salary to the respondent from 1.5.1999 till he is

reinstated in service, within a period of six weeks from the date of his reinstatement in service. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

/phalguni/`